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## **UNIFORM RULES OF JUSTICE COURT**

### **1.00 GENERAL RULES**

#### **RULE 1.01 TITLE**

These rules shall be known as the Uniform Rules of Justice Court and may be cited as U.R.J.C.: e.g., U.R.J.C. 1.01.

#### **RULE 1.02 SCOPE OF RULES**

These rules shall govern the procedures of civil actions and criminal cases in justice court. Rule Series 1.00 “General Rules” applies to all civil actions and criminal cases in justice court; Rule Series 2.00 “Civil Rules” applies only to civil actions in justice court; Rule Series 3.00 “Criminal Rules” applies only to criminal cases in justice court. Any person who violates these rules may be subject to contempt proceedings, sanctions, or other disciplinary actions. All orders of the court shall be in substantial compliance with these rules. Sample forms approved for use by justice courts may be accessed at: *(Insert hyperlink)*.

#### **RULE 1.03 DEFINITIONS**

All words and phrases shall have the meaning ascribed in the appropriate sections of the Mississippi Code applicable to the particular issue before the court, provided such are not inconsistent with these rules.

#### **RULE 1.04 COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day that the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or clerk's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. The court, in its discretion, may grant an extension of time.

#### **RULE 1.05 JUDGE TO SIGN UNIFORM CASE RECORD**

The justice court judge shall sign the uniform case record of each case, civil and criminal, in accordance with section 9-11-11 of the Mississippi Code.

## **RULE 1.06 COURTROOM DECORUM AND SECURITY**

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. Each officer of the court shall be responsible for the promotion of respect for the court. No one shall carry firearms or weapons of any description in the courtroom, except:

- (1) the bailiffs;
- (2) any necessary guards of a prisoner; or
- (3) other law enforcement or security authorized by the court to do so.

A justice court judge may carry a firearm or weapon in the courtroom upon completing a weapons training course approved by the Board of Law Enforcement Officer Standards and Training pursuant to section 97-37-7 of the Mississippi Code.

## **RULE 1.07 USE OF CAMERAS, RECORDING DEVICES, AND BROADCASTING EQUIPMENT**

Except as otherwise provided by these rules, the use of cameras, recording devices, and broadcasting equipment shall be governed by the Code of Judicial Conduct.

## **RULE 1.08 EX PARTE COMMUNICATIONS**

The judge shall not allow any person to discuss in his presence the law or facts pertaining to a civil action or criminal case pending in the court, or likely to be instituted therein, except as permitted within the orderly progress of proceedings under these rules or as otherwise allowed by law.

## **RULE 1.09 COURT RECORDS AND DOCKET**

**(a) Clerk's duty to keep papers.** Except with the permission of the justice court clerk, no original record, or any part of a file, a record or other court papers, shall be taken from the clerk's custody.

**(b) Docket.** The docket of the court shall at all times remain in the office of the justice court clerk. The clerk shall retain custody of the docket, make all entries thereon, keep it safe, and provide it to the court for examination in the office. The docket may be maintained by computer. Failure of a judge to sign the docket shall not invalidate the actions of the court contained therein.

## **RULE 1.10 CORRECTION OF CLERICAL MISTAKES**

Upon the motion of any party or the judge's own initiative, the judge may correct clerical mistakes in any judgments, orders, or other parts of the record up until the time a certified copy of the record in the case is transmitted by the clerk to the higher court on appeal. Notice of any corrected clerical mistakes shall be given to all parties of the action.

### **RULE 1.11 OFFICER OF THE COURT MUST NOT SIGN BONDS**

No officer of the court shall sign any bond of any kind in or to any court of this state.

### **RULE 1.12 WITHDRAWAL OF COUNSEL**

An attorney who has made an entry of appearance may not withdraw from the case except by leave of the court, upon good cause shown, after a notice of withdrawal has been served on the party which counsel represents and all the attorneys of record. Permission to withdraw from a case shall not be unreasonably denied.

### **RULE 1.13 RECUSAL OF JUDGES**

**(a) Disqualified judge to enter a written order of recusal.** Any justice court judge who is disqualified under Canon 3E of the Code of Judicial Conduct from participating in a proceeding shall enter a written order of recusal. Parties and their attorneys may waive a judge's disqualification pursuant to Canon 3F of the Code of Judicial Conduct.

**(b) Reassigning case if judge is disqualified.** If a judge is disqualified from participating in a case, the justice court clerk shall assign the case to another justice court judge of the county. If all the justice court judges in the county are disqualified from participating in the case, then a circuit court judge of the district may appoint any justice court judge from another county to hear the case.

**(c) Reimbursement of expenses.** Any justice court judge assigned or appointed to participate in a case under subdivision (b) of this rule shall be entitled to reimbursement of expenses pursuant to section 25-3-41 of the Mississippi Code and as otherwise allowed by law.

### **RULE 1.14 PLEADINGS AND MOTIONS**

**(a) Pleadings and motions to be signed.** All pleadings, motions or any other application to the court shall be signed by the party making the submission or, if represented by counsel, by the attorney of record.

**(b) Information to be provided.** All pleadings, motions or any other application to the court shall bear the name, mailing and physical addresses, and telephone number of the party filing the same and, if any attorney is representing the party, the attorney's name, mailing and physical addresses, telephone number, and Mississippi Bar number.

**(c) Size of paper.** All pleadings and other papers filed in any proceeding governed by these rules shall be on paper measuring 8 ½ inches x 11 inches. But exhibits or attachments to pleadings may be folded and fastened to pages of the specified size if compliance is not reasonably practicable.

**(d) Electronic filing and storage.** Pleadings, motions or any other application to the court may be filed and stored by computer or electronic means pursuant to rules and policies established by the Mississippi Supreme Court and the Administrative Office of Courts.

## **RULE 1.15 SUBPOENAS**

**(a) Request for subpoena.** Every request for subpoena shall:

- (1) be in writing;
- (2) contain the mailing and physical addresses of the witness and other information so as to furnish a sure guide to the person serving the subpoena;
- (3) be delivered to the justice court clerk in a reasonable time before the trial date; and
- (4) be signed and dated by the party requesting the subpoena.

The justice court clerk shall preserve each written request for subpoena within the court file.

**(b) Issuance of subpoenas.** Every subpoena shall:

- (1) be issued by the justice court clerk under the seal of the justice court;
- (2) state the name and address of the court and the title of the action; and
- (3) command each person to whom it is directed to attend and give testimony at a specified time and place.

**(c) Service of subpoena.** A subpoena shall be executed upon the witness personally by:

- (1) the sheriff;
- (2) the deputy sheriff;
- (3) a constable; or
- (4) any other person who is not a party and eighteen (18) years of age or older.

The endorsed return, or a written acknowledgment on the subpoena by the witness, shall be prima facie proof of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

**(d) Enforcement of subpoenas.** The judge may enforce a subpoena by any means allowed by the Mississippi Code, including the issuance of an attachment pursuant to section 11-9-115 of the Mississippi Code, or these rules.

## **RULE 1.16 APPOINTMENT OF INTERPRETERS**

**(a) Interpreters for the deaf or hearing impaired.** Interpreters for the deaf or hearing impaired, in both civil actions and criminal cases, shall be appointed pursuant to sections 13-1-301 through 13-1-315 of the Mississippi Code.

**(b) Foreign language interpreters.** Upon the motion of any party, in both civil actions and criminal cases, the judge shall determine whether a foreign language interpreter is needed for a party or witness to ensure the fair administration of justice. Any appointment of a foreign language interpreter shall be pursuant to sections 9-21-71 through 9-21-81 of the Mississippi Code. In criminal cases wherein the defendant has been declared indigent, the judge may appoint a certified foreign language interpreter pursuant to section 99-17-7 of the Mississippi Code.

**(c) Interpreter's oath.** Any interpreter appointed by the court under this rule shall take an oath to make a true translation pursuant to Rule 604 of the Mississippi Rules of Evidence and section 9-21-77 of the Mississippi Code.

## **RULE 1.17 CONDUCT OF COUNSEL AND PARTIES**

**(a) Prompt attendance required.** Prompt attendance is required by the attorneys and parties, the witnesses, and all other persons whose presence is required to conduct the business of the court.

**(b) Professional courtesy and respect to all participants.** The attorneys and parties must show professional courtesy and respect toward the judge, the jurors, the opposing attorneys and parties, the witnesses, and all other court personnel and participants within the courthouse. At no time may an attorney engage in behavior or tactics purposely calculated to irritate or annoy the opposing attorney.

**(c) When addressing the court.** When addressing the court, the attorneys and parties must:

- (1) stand unless excused for good cause by the court;
- (2) give specific grounds on any objections to testimony; and
- (3) make all objections to the judge, and not to opposing counsel.

**(d) When addressing the jury panel.** When addressing the jury panel, the attorneys and parties must stand unless excused for good cause by the court. Attorneys may directly address the jury panel only during voir dire, opening statements and closing arguments.

**(e) When examining witnesses.** When examining witnesses, the attorneys and parties must:

- (1) stand when examining witnesses, except when excused for good cause by the court;
- (2) limit themselves to asking questions; and
- (3) refrain from making statements, quips, or side remarks.

Any examination of witnesses is to be conducted fairly and objectively, with the attorneys, parties, and witnesses showing courtesy and respect to one another. Attorneys and parties may not ask questions merely to embarrass or humiliate the witness.

**(f) When making an opening statement or closing argument.** When making an opening statement or closing argument, the attorneys and parties must:

- (1) not denigrate or ridicule the opposing attorney;
- (2) not call any juror by name;
- (3) not have any personal contact with the jury whatsoever;
- (4) not attempt to converse with or solicit audible answers from the jurors individually; and
- (5) not thank the jury for acting as jurors.

The attorneys and parties are required to keep within proper bounds, and any attempt to inject an improper matter may be stopped by the court without the necessity of an objection. After the return of the verdict, the attorneys, the parties, and any spectators shall not express to the jury any congratulations, thanks, or condemnation for the verdict returned.

## **RULE 1.18 JURY TRIALS**

**(a) When a jury trial may be demanded.** A jury trial may be demanded:

- (1) in civil actions under section 11-9-143 of the Mississippi Code; and
- (2) in criminal cases under section 99-33-9 of the Mississippi Code.

**(b) Summons of jurors.** When a jury is needed, the justice court clerk shall notify the circuit court clerk who shall issue summonses for a jury in the same manner as for circuit court. The summonses shall be returnable to justice court.

**(c) Composition of jury.** Juries shall consist of six (6) persons and, in the discretion of the court, an alternate juror.

**(d) Voir dire.** Voir dire is the procedure whereby the court and the attorneys or parties ask questions of the venire to ensure the selection of a fair and impartial jury. It shall proceed in the following order:

- (1) The judge asks questions of the venire.
- (2) The prosecution (or the plaintiff's attorney or the plaintiff) asks questions of the venire, but not on matters that have already been thoroughly addressed by the judge.
- (3) The defendant's attorney or the defendant asks questions of the venire, but not on matters that have already been thoroughly addressed by the judge.

Individual jurors may be examined only by leave of court upon good cause shown. No hypothetical questions shall be allowed requiring any juror to pledge a particular verdict. Attorneys or parties shall not offer an opinion on the law. The judge may set a reasonable time limit for voir dire.

**(e) Selecting the jury panel.** The jury panel shall be selected, in the order of their appearance on the venire, as follows:

- (1) The court shall consider all challenges for cause.
- (2) The prosecution (or the plaintiff's attorney or the plaintiff) may use one or both of its peremptory challenges, then tender to the defendant a full panel of accepted jurors.
- (3) The defendant's attorney or the defendant may use one or both of its peremptory challenges, then tender to the plaintiff a full panel of accepted jurors.
- (4) Steps (2) and (3) of this subdivision are then repeated until a full panel of jurors has been accepted by both sides.

Each side shall have two (2) peremptory challenges. Objections on their use shall be made at the time the panel is tendered to the opposing party. Upon the motion of any party or the judge's own initiative, the judge shall excuse any juror from service in the case if there is reasonable ground to believe that such juror cannot render a fair and impartial verdict.

**(f) Alternate jurors.** Once a jury panel is selected, an alternate juror is selected following the same procedure set forth above for selecting the jury panel, except that each side is only allowed one peremptory challenge. The alternate juror shall take the oath of a juror and hear all evidence and arguments, but may not retire to deliberate the case unless a juror is excused by the court or becomes unable to serve.

**(g) Communications with jurors.** Jurors are not permitted to mix and mingle anywhere in the courthouse with the attorneys, the parties, the witnesses, or spectators. The judge must instruct jurors to avoid all contact with the attorneys, the parties, the witnesses, and any spectators.

**(h) Jury instructions.** The judge shall provide the jury with written instructions on the law applicable to the case.



**(i) Jury deliberations.** The judge shall:

- (1) direct the jury to select one of its members to preside over the deliberations;
- (2) direct the jury to return its verdict in writing to the court; and
- (3) admonish the jurors that, until discharged as jurors in the cause, they may only discuss the case with other members of the jurors when convened in the jury room for the purpose of reaching a verdict.

Unless otherwise authorized by the court, the jurors shall not disperse once deliberations have begun. After the jurors have retired to consider their verdict, the judge shall not recall the jurors to hear additional evidence.

**(j) Materials allowed during deliberation.** When retiring for deliberation, the jurors are allowed to take with them:

- (1) the form of verdict approved by the court;
- (2) a copy of the written jury instructions;
- (3) any tangible evidence that was admitted at the trial; and
- (4) their personal notes made during the course of the trial.

**(k) Returning the verdict.** Any agreed upon verdict shall be unanimous, in writing, and returned in open court. In civil actions, the parties may stipulate by affidavit to a specified majority verdict less than unanimous. Any verdict returned may be appealed pursuant to Rule 1.20 of these rules.

**(l) Jury poll.** After a verdict is returned but before the jury is discharged, the judge shall on the request of either side, or may on his own initiative, poll the jurors individually. The judge shall direct the jury to retire and deliberate further if the poll reveals that the verdict:

- (1) is not unanimous; or
- (2) when applicable in a civil trial, is less than the stipulated majority.

## **RULE 1.19 CONTEMPT OF COURT**

**(a) Direct contempt.** The judge may summarily find in direct contempt any person who in the presence of the court commits an act or speaks words tending to embarrass or prevent the orderly administration of justice. Such finding must be announced in open court contemporaneous to the offending conduct. The judge shall, without undue delay thereafter, impose sanctions pursuant to section 9-11-15 of the Mississippi Code. Prior to imposing sanctions, the judge may allow the contemnor an opportunity to present exculpatory or mitigating circumstances. Upon any final judgment of guilt for direct contempt, the judge shall enter an order that specifically sets out the substantial acts for which the contemnor had been convicted.

**(b) Constructive contempt.**

**(1) Issuing citation to show cause for contempt of court.** The judge may issue a citation to show cause for contempt of court if, based upon an affidavit or sworn testimony taken or certified court records, there is probable cause to believe that a party or witness has committed an act beyond the presence of the court that is calculated to impede, embarrass, obstruct, defeat, or corrupt the orderly administration of justice. The citation to show cause for contempt of court shall specify the contemptuous conduct, including any violated terms or conditions imposed by the court, and have attached thereto copies of any supporting documentation. A judge's disqualification to hear a constructive contempt case is governed by

Canon 3E of the Code of Judicial Conduct.

**(2) Show cause hearings.**

**Show cause hearing for civil contempt.** If the allegations are to be tried as civil contempt, then the judge shall conduct the hearing in accordance with procedures governing civil actions under these rules. To sustain a judgment for civil contempt requires proof by a preponderance of the evidence. A judge may order a person adjudged to be in civil contempt to a jail term not exceeding six (6) months' imprisonment provided there are reasonable conditions by which the sanction may be purged. But no imprisonment shall be imposed for failure to pay a fine, restitution, or court costs unless there is substantial compliance with Rule 3.17 of these rules.

**Show cause hearing for criminal contempt.** If the allegations are to be tried as criminal contempt, then the judge shall conduct the hearing in accordance with procedures governing criminal cases under these rules. Such includes advising the defendant of his rights under Rule 3.04 of these rules. To sustain a judgment for criminal contempt requires proof beyond a reasonable doubt. Upon an adjudication of guilt for criminal contempt, the judge shall impose sanctions pursuant to section 9-11-15 of the Mississippi Code. But no imprisonment shall be imposed for failure to pay a fine, restitution, or court costs unless there is substantial compliance with Rule 3.17 of these rules.

**(3) Bench warrant for failure to appear.** The judge may issue a bench warrant to secure the presence of any person properly served with a citation to show cause for contempt of court but who thereafter failed to appear as summoned.

**(c) Appeals.** Any appeal for contempt of court is governed by Rule 1.20 of these rules.

## **RULE 1.20 APPEALS FROM JUSTICE COURT**

**(a) Civil appeals.** Civil appeals from justice court shall be governed by Rules 5.01, 5.04, 5.07, 5.08 and 5.09 of the Uniform Rules of Circuit and County Court. Either party aggrieved by a justice court judgment rendered in a case of unlawful entry and detainer, may, after final judgment, appeal to the circuit court of the county pursuant to section 11-51-83 of the Mississippi Code.

**(b) Criminal appeals.** Criminal appeals from justice court shall be governed by Rule 12.02 of the Uniform Rules of Circuit and County Court.

**(c) Writ of certiorari.** The availability of writs of certiorari shall be as provided by the Mississippi Constitution and section 11-51-93 of the Mississippi Code.

## **2.00 CIVIL RULES**

### **RULE 2.01 FORM OF ACTION**

There shall be one form of action known as "civil action."

## **RULE 2.02 COMMENCEMENT OF CIVIL ACTION**

A civil action shall be commenced pursuant to section 11-9-105 of the Mississippi Code.

## **RULE 2.03 SUMMONS**

### **(a) Issuance.**

**(1) If the constable is to serve process.** Upon the filing of the sworn declaration, the clerk shall deliver the summons and a copy of the sworn declaration to the constable of the county in which the defendant resides or is found.

**(2) If the sheriff is to serve process.** When any process has not been returned by the constable as required by this rule and the plaintiff does not invoke Rule 2.03(e) of this rule, the clerk shall deliver the summons and a copy of the sworn declaration to the sheriff of the county in which the defendant resides or is found.

**(3) If a process server is to serve process.** Upon written request, the clerk shall deliver the summons and a copy of the sworn declaration to the plaintiff or the plaintiff's attorney for service whenever service of process by a process server is allowed under Rule 2.03(e) of this rule.

**(4) If service is by certified mail on person outside this state.** Upon written request, the clerk shall deliver the summons and a copy of the sworn declaration to the plaintiff or the plaintiff's attorney for service whenever service of process is allowed under Rule 2.03(f) of this rule.

Under subparagraphs (1) through (4) of this subdivision, the person to whom the summons is delivered shall be responsible for promptly serving process. In the case of multiple defendants, a separate summons and copy of the sworn declaration shall be served for each defendant named in the action.

### **(b) Form.** The summons shall:

- (1) name the court and the parties;
- (2) be directed to the defendant;
- (3) state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;
- (4) state the date and time within which the defendant must appear and defend;
- (5) notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the sworn declaration;
- (6) be signed by the clerk; and
- (7) bear the court's seal.

### **(c) Service by constable.**

#### **(1) Upon an individual other than an unmarried infant or mentally incompetent person.**

(A) The constable shall serve process by delivering a copy of the summons and sworn declaration to the defendant or to an agent authorized by appointment or by law to receive process.

(B) If service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, the constable shall serve process by leaving a copy of the summons and sworn declaration at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's

family above the age of sixteen (16) years who is willing to receive service, and within 3 days thereafter, by mailing a copy of the summons and sworn declaration (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and sworn declaration were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(C) If service under subparagraphs (1)(A) and (B) of this subdivision cannot be made with reasonable diligence, the constable shall serve process by posting a copy of the summons and sworn declaration on a door of the defendant's usual place of abode and in the courthouse and, within 3 days thereafter, the constable shall mail a copy of the summons and sworn declaration to the person to be served at the defendant's usual place of abode where a copy of the summons and sworn declaration were left, either: (i) by first class mail, postage prepaid, but only if the constable files with the clerk of the court a sworn affidavit that a copy of the summons had been posted as required under this rules provision and that a copy of the summons had been mailed by first class mail, postage prepaid, to the defendant within three (3) days of the posting; or (ii) by certified mail, return receipt requested.

Service of summons is deemed complete on the 10<sup>th</sup> day after the first class mailing or, if by certified mail, upon the court receiving the return receipt, whether returned delivered or undeliverable.

**(2) Upon an unmarried infant or mentally incompetent person.** The constable shall serve process in the manner provided under Rule 4(d)(2) of the Mississippi Rules of Civil Procedure.

**(3) Upon an individual confined to a penal institution within this state.** The constable shall serve process in the manner provided under Rule 4(d)(3) of the Mississippi Rules of Civil Procedure.

**(4) Upon a domestic or foreign corporation or a partnership or other unincorporated association.** The constable shall serve process in the manner provided under Rule 4(d)(4) of the Mississippi Rules of Civil Procedure.

**(5) Upon the State of Mississippi or any one of its departments, officers or institutions.** The constable shall serve process in the manner provided under Rule 4(d)(5) of the Mississippi Rules of Civil Procedure.

**(6) Upon a county.** The constable shall serve process in the manner provided under Rule 4(d)(6) of the Mississippi Rules of Civil Procedure.

**(7) Upon a municipal corporation.** The constable shall serve process in the manner provided under Rule 4(d)(7) of the Mississippi Rules of Civil Procedure.

**(8) Upon any governmental entity not mentioned above.** The constable shall serve process in the manner provided under Rule 4(d)(8) of the Mississippi Rules of Civil Procedure.

**(d) Service by sheriff.** When any process has not been returned by the constable as required by this rule and the plaintiff does not invoke Rule 2.03(e) of this rule, the clerk shall direct the sheriff of the county to serve process in like manner as required of a constable under this rule.

**(e) Service by process server.** When any process has not been returned by the constable as required by this rule, the plaintiff may opt for service by a process server by making a written request to the clerk that such be used in lieu of service by the sheriff under Rule 2.03(d). A process server, who must not be a party to the action and who must be at least eighteen (18) years of age, shall serve process in like manner

as required of a constable under this rule.

**(f) Service by certified mail on person outside the state.** In addition to service by any other method provided by this rule, a summons may be served on a person outside this state by sending a copy of the summons and sworn declaration to the person to be served by certified mail, return receipt requested. Where the defendant is a natural person, the envelope containing the copy of the summons and sworn declaration shall be marked "Restricted Delivery." Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked "Refused."

**(g) Waiver.** Any party defendant who is not an unmarried infant or mentally incompetent may waive the service of process or enter an appearance, with the effect of being duly served with lawful process, in the manner provided under Rule 4(e) of the Mississippi Rules of Civil Procedure.

**(h) Return.**

**(1) By constable.** Within 10 working days of the delivery of the summons and a copy of the sworn declaration to the constable for service of process, unless service has been waived under Rule 2.03(g), the constable shall file proof of service with the clerk.

**(2) By sheriff.** Within 10 working days of the delivery of the summons and a copy of the sworn declaration to the sheriff for service of process, unless service has been waived under Rule 2.03(g), the sheriff shall file proof of service with the clerk.

**(3) By process server.** Within 10 working days of the delivery of the summons and a copy of the sworn declaration to the plaintiff or the plaintiff's attorney for service of process by process server, unless service has been waived under Rule 2.03(g), the process server shall file an affidavit showing proof of service with the clerk.

**(4) By certified mail on person outside the state.** Within 20 days of the delivery of the summons and a copy of the sworn declaration to the plaintiff or the plaintiff's attorney for service of process by certified mail on a person outside the state, the sender shall file with the clerk the return receipt or the returned envelope marked "Refused."

Under subparagraphs (1) through (4) of this subdivision, failure to make proof of service does not affect the validity of the service.

**(i) Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

**(j) Time limit for service.** The judge on his own initiative shall dismiss without prejudice any action in which, without good cause, the service of a copy of the summons and sworn declaration is not made upon the defendant within 60 days after the filing of the sworn declaration.

**(k) Fees for service.**

**(1) If by constable.** When a copy of the summons and sworn declaration are served by the constable, an amount not exceeding that statutorily allowed by law may be taxed as recoverable costs in the action.

**(2) If by sheriff.** When a copy of the summons and sworn declaration are served by the sheriff, an amount not exceeding that statutorily allowed by law may be taxed as recoverable costs in the action.

**(3) If by process server.** When a copy of the summons and sworn declaration are served by process server, an amount not exceeding that statutorily allowed to the constable for service of process may be taxed as recoverable costs in the action.

**(4) If service by certified mail on person outside the state.** When a copy of the summons and sworn declaration are served by certified mail on a person outside the state, the amount of postage by certified mail may be taxed as recoverable costs in the action.

Under subparagraphs (1) and (2) of this subdivision, no fees for service shall be paid to a constable or sheriff who has not served process in substantial compliance to this rule.

#### **RULE 2.04 FAILURE TO APPEAR ON TRIAL DATE**

**(a) When only the defendant fails to appear.** If the defendant fails to appear on the trial date, and the plaintiff appears, then the court may enter a default judgment provided:

- (1) there is a factual basis to support the claim by a preponderance of the evidence; and
- (2) the judgment is not different in kind from or exceed an amount of that demanded in the sworn declaration.

For good cause shown, the judge may set aside a default judgment. In making this determination, the judge must weigh the following factors: the nature and legitimacy of a defendant's reasons for default, whether the defendant has a colorable defense to the merits of the claim, and the nature and extent of prejudice that a plaintiff would suffer if the default is set aside.

**(b) When only the plaintiff fails to appear.** If the plaintiff fails to appear on the trial date, and the defendant appears, then the court shall dismiss the case with prejudice.

**(c) When both the plaintiff and defendant fail to appear.** If both the plaintiff and the defendant fail to appear on the trial date, then the court shall dismiss the case without prejudice.

#### **RULE 2.05 COUNTERCLAIMS AND SETOFFS**

Counterclaims and setoffs shall be liberally allowed by the court. Failure to assert any counterclaim or setoff shall not bar a subsequent civil action of those claims. The judge shall dismiss without prejudice any counterclaim that exceeds the jurisdictional limits of justice court.

#### **RULE 2.06 REPRESENTATION BY GUARDIAN AD LITEM**

A guardian ad litem appointed by the court to represent the best interests of an infant or a person under a legal disability, and who is an attorney, may sue or defend a civil action on behalf of such persons. Reasonable costs and fees of the guardian ad litem in suing or defending the civil action may be taxed as court costs.

## **RULE 2.07 SUBSTITUTION OF PARTIES**

**(a) If a party dies.** If a party dies and the claim is not thereby extinguished, any party or the successors or representatives of the deceased party may file, within ninety (90) days of the party's death, a motion for the substitution of parties. Notice of the motion and the hearing date shall be issued and served on the parties in the same manner as required for service of summons under Rule 2.03 of these rules. The judge shall dismiss without prejudice the action if the motion for substitution of parties is not filed timely.

In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

**(b) If a party comes under a legal disability.** Upon the motion of any party, the judge may allow a civil action to be continued by or against a representative of a party who comes under a legal disability. Notice of the motion and hearing date shall be issued and served on the parties in the same manner as required for service of summons under Rule 2.03 of these rules.

**(c) If there is a transfer of interest.** Upon the motion of any party, the judge may direct that the person to whom the interest was transferred be substituted for, or joined with, the original party in the civil action. Notice of the motion and hearing date shall be issued and served on the parties in the same manner as required for service of summons under Rule 2.03 of these rules.

**(d) If a party is a public officer who dies or resigns in office.** A civil action shall not abate if a party is a public officer acting in his official capacity who dies, resigns, or otherwise ceases to hold office. Instead, the public officer's successor shall be substituted as a party. The judge may enter an order of substitution at any time in the course of the action, but its omission shall not affect the substitution.

## **RULE 2.08 DISMISSAL OF AN ACTION BY WRITTEN MOTION**

If the plaintiff files prior to trial a written motion for the dismissal of a civil action, the judge shall dismiss the action without prejudice. Plaintiff's costs shall not be assessed against the defendant.

## **RULE 2.09 CONSOLIDATION AND SEPARATION OF TRIALS**

**(a) Consolidating actions.** When two or more civil actions with a common question of law or fact are pending before the court, the judge may:

- (1) order a joint hearing or trial of any or all matters pertaining to the common question of law or fact;
- (2) order all the actions consolidated for trial; or
- (3) make such orders concerning proceedings on the action so as to avoid unnecessary costs or delay.

**(b) Separate trials.** The judge may order a separate trial of any claim in a civil action for reasons of:

- (1) avoiding prejudice;
- (2) expediting the resolution of claims in the action; or
- (3) economical considerations neutral to the litigation.

## **RULE 2.10 MISTRIAL**

**(a) For misconduct by the defendant.** Upon motion of the plaintiff, the judge shall declare a mistrial if there occurs during the trial misconduct by the defendant, the defendant's attorney, or a defendant's witness resulting in substantial and irreparable prejudice to the plaintiff's action. But if there are two or more defendants, the judge shall not declare a mistrial as to any defendant who is not an offending party and who requests that the trial continue.

**(b) For misconduct by the plaintiff.** Upon motion of the defendant, the judge shall declare a mistrial if there occurs during the trial misconduct by the plaintiff or a plaintiff's witness resulting in substantial and irreparable prejudice to the defense.

**(c) Other reasons for declaring a mistrial.** Upon motion of any party or the judge's own initiative, the judge shall declare a mistrial if:

- (1) the trial cannot proceed in conformity with law; or
- (2) the jury is deadlocked and there is no reasonable probability of a unanimous verdict or, if the parties stipulated by affidavit to a specified majority verdict less than unanimous, there is no reasonable probability of the specified majority verdict.

## **RULE 2.11 POST-JUDGMENT ACTIONS**

Unless authorized by law, no post-judgment action shall be instituted upon a judgment until expiration of ten (10) days after its entry.

## **RULE 2.12 CORPORATIONS MUST BE REPRESENTED BY COUNSEL**

All corporations, limited liability companies, or partnerships that are parties must be represented by an attorney licensed to practice law in this state. All pleadings, motions or any other application to the court must be submitted by the attorney of record in compliance with Rule 1.14 of these rules.

## **RULE 2.13 ENFORCEMENT OF JUDGMENTS**

**(a) Statutory procedures to govern.** Procedures to enforce a civil judgment shall be pursuant to the Mississippi Code and any applicable rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts.

**(b) Examining books, papers, and documents of judgment debtor.** The judgment creditor may examine the judgment debtor and his books, papers, or documents pursuant to sections 13-1-261 through 13-1-271 of the Mississippi Code.



### 3.00 CRIMINAL RULES

#### RULE 3.01 LODGING A CRIMINAL AFFIDAVIT

All criminal affidavits shall be lodged with and sworn to the judge or clerk of the justice court pursuant to section 99-33-2 of the Mississippi Code. Traffic tickets, including tickets for violations of the Mississippi Implied Consent Law, may be filed and stored by computer or electronic means pursuant to section 63-9-21 of the Mississippi Code. Any criminal affidavit filed and stored by computer or electronic means must conform to the rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts that address the electronic filing or storage of documents.

#### RULE 3.02 ARREST WARRANTS AND CITATIONS

**(a) Probable cause determination.** The judge shall issue an arrest warrant or citation under these rules if from the affidavit, and any sworn testimony taken, there is probable cause to believe that the alleged offense has been committed and probable cause to believe that the defendant committed it. In determining probable cause to issue an arrest warrant, the judge may consider hearsay testimony, in whole or in part, provided there is a substantial basis for believing that:

- (1) the source of the hearsay testimony is credible; and
- (2) there is a factual basis for the information furnished.

**(b) Issuance of arrest warrants or citations in misdemeanor cases.** Upon a finding of probable cause under this rule, the judge shall immediately order the issuance of a citation or an arrest warrant. A citation may only be issued if:

- (1) the defendant is not in custody;
- (2) the offense is bailable as a matter of right; and
- (3) there is no reason to believe that the defendant will not respond to the citation.

**(c) Issuance of arrest warrants in felony cases.** Upon a finding of probable cause under this rule, the judge shall immediately cause to be issued an arrest warrant.

**(d) Arrest warrant to issue if citation is ineffective.** The judge shall cause to be issued an arrest warrant if:

- (1) the defendant for whom a citation has been issued fails to appear;
- (2) there is reasonable cause to believe, after the issuance of a citation, that the defendant will fail to appear; or
- (3) the citation cannot be served or delivered.

**(e) Contents of arrest warrant.** The arrest warrant shall:

- (1) contain the complete name of the defendant, or if the name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
- (2) contain the last known address of the defendant, if any;
- (3) state the offense with which the defendant is charged;
- (4) command that the defendant be arrested and brought before the issuing judge or, if the issuing judge is unavailable, before the nearest and most accessible judge having jurisdiction;
- (5) be signed by the judge; and

(6) show the date and time of its issuance.

If the arrest warrant is issued for a bailable offense, the judge may include conditions for the defendant's release either on recognizance or in accordance with the appearance bond schedule under these rules. Any defendant obtaining release shall be given written notice of when to appear in court. In no event may a defendant arrested for an act of domestic violence or a knowing violation of a domestic abuse protective order be released without first appearing before the judge as required under section 99-5-37 of the Mississippi Code.

**(f) Contents of citation.** The citation, which is to be in the same form as an arrest warrant, shall direct the defendant to appear before the court at a specified date and time. Within the citation, the judge may command the defendant to report at a designated place to be photographed and fingerprinted prior to the scheduled court appearance. A judge may order the issuance of an arrest warrant for any defendant who fails to so report unless good cause is shown.

**(g) Execution of arrest warrant and return.**

**(1) By Whom.** The judge shall direct that the arrest warrant be executed and returned by any officer within the State of Mississippi authorized by law to make the arrest.

**(2) Manner of Execution.** The judge shall direct that the arrest warrant be executed by arresting the defendant.

**(3) Return.** The judge shall direct that the officer executing the arrest warrant endorse thereon the manner and date of execution, subscribe his name, and promptly return the arrest warrant to the justice court clerk.

**(h) Service of citation.** The citation may be served by any officer authorized by law within the State of Mississippi. At the discretion of the judge or the justice court clerk, a citation may be served by certified, return receipt mail or an equivalent thereof. The returned receipt signed by the defendant shall be prima facie evidence of service. An officer serving a citation shall make the return in the same manner as required under this rule for the return of an arrest warrant.

**(i) Docketing case.** A case shall be docketed upon service of a citation or the defendant's arrest.

**(j) Issuing citations for persons protected from arrest under section 99-3-28 of the Mississippi Code.** Upon a finding of probable cause under this rule, the judge may issue a citation for any person protected from arrest under section 99-3-28 of the Mississippi Code.

### **RULE 3.03 SEARCH WARRANTS**

**(a) Persons or property subject to search or seizure.** A search warrant under this rule may be issued for the following:

- (1) evidence of a crime;
- (2) contraband or fruits of a crime;
- (3) property designed for use, intended for use, or which is being used or has been used in committing a crime; or
- (4) a person who has physical possession of anything covered in (1), (2), or (3) of this subdivision.

**(b) Issuance of search warrant.** The judge shall cause to be issued a search warrant under these rules if from the affidavit and any sworn testimony taken, including the underlying facts and circumstances on the sworn application for the search warrant, there is probable cause to believe that persons or property subject to search or seizure under this rule will be found in a particular place. In determining probable cause for the issuance of a search warrant, the judge may consider hearsay testimony, in whole or in part, provided there is a substantial basis for believing that:

- (1) the source of the hearsay testimony is credible; and
- (2) there is a factual basis for the information furnished.

**(c) Contents of search warrant.** The search warrant issued shall:

- (1) be directed to any law enforcement officer authorized by law to execute search warrants;
- (2) specially designate the place to be searched and the person or thing to be seized;
- (3) require that the search be conducted within a specified time period, not to exceed ten (10) days from its issuance;
- (4) require the executing law enforcement officer to conduct an inventory of all property seized;
- (5) require the executing law enforcement officer, whenever feasible, to give the person from whose possession or premises the property was taken a copy of the search warrant and a copy of the endorsed inventory of all property seized;
- (6) require that all property seized under the search warrant be retained in the custody of the seizing law enforcement agency until otherwise directed by the court;
- (7) require the executing law enforcement officer to promptly return the executed search warrant, along with the endorsed inventory of all property seized, to the justice court clerk;
- (8) be signed by the judge; and
- (9) show the date and time of its issuance.

**(d) Time of execution.** The judge may direct law enforcement officers to execute the search warrant:

- (1) only in the daytime; or
- (2) anytime of the day or night.

**(e) Authority to break and enter.** The judge may authorize law enforcement officers executing a search warrant to break into any house, dwelling, structure, vehicle, or any part thereof, for either of the following contingencies:

- (1) the officer, after announcing his authority and purpose, receives no response within a reasonable time or is refused admittance; or
- (2) the particular circumstances and the objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose before entering would endanger the safety of any person or result in the destruction of evidence.

**(f) Incidental seizure of other property.** The judge may authorize law enforcement officers executing a search warrant to seize any contraband discovered in the course of the search if the incriminating nature of the object is immediately apparent.

**(g) Preservation of evidence.** The judge may authorize law enforcement officers executing a search warrant to make or cause to be made photographs, measurements, impressions, or scientific tests.

**(h) Incidental search of a person.** The judge may authorize law enforcement officers executing a search warrant to search any person who is on the premises, or within the vehicle, for either of the following contingencies:

- (1) it is reasonably necessary to protect the officer or others from the use of any weapon that may be concealed upon the person; or
- (2) it reasonably appears that the property or items listed in the search warrant may be concealed upon the person.

**(i) Inventory of property seized.** The judge shall direct law enforcement officers to conduct an inventory of all property seized. The inventory shall be done, whenever feasible, in the presence of the person from whose possession or premises the property was taken. The completed inventory shall be endorsed by the law enforcement officer who conducted it and a copy of the inventory shall be given to the person from whose possession or premises the property was taken.

**(j) Unexecuted search warrants.** The judge shall direct that all unexecuted search warrants be promptly returned to the justice court clerk. Unless otherwise provided by law, any unexecuted search warrant returned to the court may be destroyed.

**(k) Motion for the return of unlawfully seized property.** A person entitled to lawful possession of property unlawfully seized may move the court for its return. If the motion is granted, the judge shall direct that the property be restored.

#### **RULE 3.04 INITIAL APPEARANCE**

**(a) Proceedings.** Every person in custody shall be taken without unnecessary delay, but in no event later than forty-eight (48) hours after arrest, or within twenty-four (24) hours as required under section 99-5-37 of the Mississippi Code for a misdemeanor which is an act of domestic violence, before a judge for an initial appearance. At the initial appearance, the judge shall:

- (1) ascertain the defendant's name and mailing and physical addresses, amend the formal charge if necessary to reflect this information, and instruct the defendant to promptly notify the court of any change of address;
- (2) inform the defendant of the charges and provide the defendant with a copy of the charging document; and
- (3) advise the defendant of the following rights:  
that the defendant has the right to remain silent and that any statements made may be used against him;  
that the defendant, if unrepresented, has the right to the assistance of an attorney, and that if the defendant is unable to afford an attorney, an attorney will be appointed as required by law;  
that the defendant has the right to communicate with an attorney, family or friends, and that reasonable means will be provided to enable the defendant to do so; and  
the conditions under which the defendant may obtain release, if any.

**(b) Additional proceeding if arrest made without a warrant.** If the arrest has been made without a warrant, the judge shall also determine, pursuant to the procedures set forth in Rule 3.02 of these rules, whether there is probable cause to believe that the defendant committed the alleged offense. The defendant shall be released if:

- (1) the judge finds that there is no probable cause for the warrantless arrest; or
- (2) the judge fails to make a probable cause determination.

**(c) Additional proceeding if defendant is charged with a felony.** If the defendant is charged by affidavit with the commission of a felony, the judge shall also:

- (1) inform the defendant of the right to demand a preliminary hearing and the procedures by which that right may be exercised; and
- (2) if so demanded, set the time for the preliminary hearing in accordance with Rule 3.05 of these rules.

**(d) When initial appearance is not required.** A defendant shall not be entitled to an initial appearance if:

- (1) the defendant has been released from custody; or
- (2) the defendant has been indicted by a grand jury on the underlying offense.

**(e) Interactive audiovisual devices.** The judge may permit the use of an interactive audiovisual device in conducting initial appearances if:

- (1) there is a written stipulation by the prosecution and defendant agreeing to the use of the audiovisual device;
- (2) the court determines that the defendant knowingly, intelligently, and voluntarily agrees to its use;
- (3) the interactive audiovisual device used allows the court and all parties to view and converse with each other simultaneously; and
- (4) the defendant's right to communicate confidentially with counsel is preserved.

### **RULE 3.05 PRELIMINARY HEARING**

**(a) Purpose.** The purpose of a preliminary hearing is to determine whether probable cause for arrest exists.

**(b) When commenced.** The judge shall conduct a preliminary hearing within thirty (30) days of the defendant's initial appearance on a felony charge if the defendant remains in custody, or within thirty (30) days following a request for a preliminary hearing if the defendant has been released, unless:

- (1) the charge has been dismissed;
- (2) the defendant, having been advised of the right to a preliminary hearing and its purpose, knowingly, intelligently, and voluntarily signs a written waiver;
- (3) the preliminary hearing is postponed pursuant to subdivision (c) of this rule; or
- (4) the defendant has been indicted by a grand jury prior to the commencement of the preliminary hearing.

If a preliminary hearing is not commenced within the time period required by this rule, any defendant charged with a bailable offense shall be released on recognizance. For defendants charged with a non-bailable offense, the judge shall immediately notify a circuit court judge within the county and explain the reasons for the delay. Upon hearing the explanation, the circuit court judge may order that a preliminary hearing be set by a specified date.

**(c) Postponement.** Upon the motion of any party or the judge's own initiative, the judge may grant a postponement of a preliminary hearing if:

- (1) there is good cause shown justifying the postponement;
- (2) the judge enters a written order detailing the reasons for the postponement; and
- (3) notice of the postponement is promptly given to all parties.

**(d) Double jeopardy not applicable.** Failure to receive a preliminary hearing pursuant to this rule will not result in jeopardy attaching and will not stand as a bar to the prosecution of any crime for which a defendant is charged.

**(e) Proceedings.** At the preliminary hearing, the judge shall determine if there is probable cause to believe that the defendant committed the alleged offense and, if the defendant is charged with a bailable offense, the conditions for release. Only evidence relevant to these issues shall be admitted. The judge may consider hearsay testimony, in whole or in part, provided there is a substantial basis for believing that:

- (1) the source of the hearsay testimony is credible; and
- (2) there is a factual basis for the information furnished.

All parties shall have the right to subpoena witnesses and cross-examine adverse witnesses testifying at the hearing.

If the evidence presented establishes probable cause to believe that the defendant committed the alleged offense, the judge shall make a written finding of that determination and bind the defendant over to await action of the grand jury. The judge shall also make a written finding of the conditions under which the defendant may obtain release, if any.

But if the evidence presented does not establish probable cause to believe that the defendant committed the alleged offense, the judge shall discharge the defendant from custody or, if the defendant is not in custody, discharge the defendant from any bond that was posted. The discharge of the defendant shall not preclude the prosecutor from presenting the same offense to a grand jury.

**(f) Amendment of charges.** The prosecutor may amend the charge against the defendant at any time to conform to the evidence if such does not substantially prejudice the defendant's ability to present a defense.

**(g) Interactive audiovisual devices.** The judge may permit the use of an interactive audiovisual device in conducting preliminary hearings if:

- (1) there is a written stipulation by the prosecution and defendant agreeing to the use of the audiovisual device;
- (2) the court determines that the defendant knowingly, intelligently, and voluntarily agrees to its use;
- (3) the interactive audiovisual device used allows the court and all parties to view and converse with each other simultaneously; and
- (4) the defendant's right to communicate confidentially with counsel is preserved.

## **RULE 3.06 COUNSEL**

**(a) Right to be represented by counsel.** A defendant has the right to be represented by counsel at an initial appearance, a preliminary hearing, trial or any other proceeding under these rules to the extent guaranteed by the United States Constitution, the Mississippi Constitution, and the laws of the State of Mississippi.

**(b) Appointing counsel.** Upon the request of an indigent defendant, the judge shall appoint counsel in any criminal case punishable by imprisonment. Any defendant claiming indigent status shall complete a sworn "Affidavit of Substantial Financial Hardship" on a form approved by the Mississippi Supreme Court. Additionally, the judge may examine the defendant under oath regarding his financial resources.

If the defendant is entitled to appointed counsel, the judge shall appoint the public defender or, if the county does not have a public defender, a private attorney. Any appointment of a private attorney shall be made in a manner that is fair and equitable to the members of the Mississippi Bar. A private attorney appointed to represent an indigent defendant is entitled to compensation for services as provided by law.

Any order appointing counsel shall:

- (1) be signed by the judge; and
- (2) include the "Affidavit of Substantial Financial Hardship."

A copy of the order shall be given or mailed to the defendant, the appointed counsel, and the prosecutor. Upon a material change in financial circumstances, the judge may reconsider any order granting or denying appointed counsel.

**(c) Waiver of counsel.** The defendant may waive the right to counsel by submitting to the court a signed waiver of counsel that is knowingly, intelligently, and voluntarily made. Any waiver so submitted shall be retained in the court file.

**(d) Consequences of failing to retain counsel.** Court proceedings under these rules shall not be delayed because a defendant who has been given a reasonable time to retain counsel has, without good cause shown, failed to do so.

**(e) Compensation for services of reasonable and necessary expenses.** If approved in advance by the judge, compensation for services shall include any reasonable fees and expenses necessary for the effective assistance of counsel in defending the case including, but not limited to, those of expert witnesses.

## **RULE 3.07 BAIL BONDS AND RELEASE ON PERSONAL RECOGNIZANCE**

**(a) Restrictions in setting bail.**

**(1) Capital offenses.** Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption is great or when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty years or more.

**(2) Offenses punishable by twenty (20) years or life imprisonment.** In cases punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment, the justice court judge may deny bail for such offenses when proof is evident or the presumption great upon making a determination that the release of the person arrested for such offense would constitute a special danger to any other person or to the community or that no condition or combination of conditions will reasonably assure the appearance of the person as required.

**(3) Attempted murder.** In cases of attempted murder, the justice court judge shall deny bail until either a finding is made that the person wounded will recover from the injury or that the case to be prosecuted, in any event, would not amount to murder. Upon either of these findings, the accused shall be dealt with as in other cases.

**(4) Misdemeanor domestic violence offenses or a knowing violation of a domestic abuse protection order.** In misdemeanor cases of domestic violence or for a knowing violation of a domestic abuse protective order, the justice court judge must comply with the statutory directives under section 99-5-37 of the Mississippi Code.

**(5) Judge to specify reasons for denying bail.** In any felony case where bail is denied before conviction, the justice court judge shall specify in the record the reasons for denying bail.

**(b) Secured appearance bonds.** The justice court judge may order that a defendant charged with a crime and eligible for release on bail be released upon posting a secured appearance bond as set by the judge. A defendant whose release is conditioned upon posting such a bond may obtain release by posting a cash deposit bond, a surety bond, or, if allowed by the justice court judge, a property bond, as follows:

**(1) Cash deposit bond.** A cash deposit bond requires the defendant to deposit with the clerk of that court to which the bond is returnable, or the sheriff or officer having custody of the defendant, a cash sum in the full amount of the bail set by the judge. Upon receiving such monies, the clerk of the court, or the sheriff or officer having custody of the defendant, shall give the defendant a receipt of the cash sum tendered and forthwith deliver the monies to the county treasurer. Thereafter, the clerk of the court, or the sheriff or officer having custody of the defendant, shall forthwith deliver one (1) copy of the county treasurer's receipt of deposit to the justice court judge, who shall then order the release of the defendant.

**(2) Surety bond.** A surety bond requires a surety authorized to execute an appearance bond under the Mississippi Code to deposit with the clerk of that court to which the bond is returnable, or the sheriff or officer having custody of the defendant, a surety bond that complies with the Mississippi Code and these rules for the full amount of the bail set by the judge. Thereafter, the clerk of the court, or the sheriff or officer having custody of the defendant, shall forthwith deliver one (1) copy of the receipt of deposit of the surety bond to the justice court judge, who shall then order the release of the defendant.

Except for sureties governed by Title 83, Chapter 39 of the Mississippi Code, neither the clerk of the court nor the sheriff or officer having custody of the defendant may accept a surety bond to satisfy bail until that person acting as surety has filed a sworn affidavit or certification of solvency with the court:

(i) stating that the surety is not an attorney, judicial official, or person authorized to take bail or, if the surety is an attorney, judicial official, or person authorized to take bail, then stating the surety's relationship to the defendant;

(ii) stating that the surety owns property that, exclusive of all encumbrances or liabilities thereon, has a value equal to or greater than the full amount of the bail set by the judge;



- (iii) specifying a description of the property owned and any encumbrances and liabilities thereon; and
- (iv) specifying the number and amount of other outstanding appearance bonds entered into by the surety.

An attorney, judicial official, or person authorized to take bail shall not be precluded from being a surety for a member of the surety's immediate family, which is limited to the surety's spouse, the surety's sibling, the surety's spouse's sibling, the surety's lineal ancestor or descendant, the surety's lineal ancestor or descendant of a spouse, or a minor or incompetent person dependent upon the surety for more than one-half (1/2) of the surety's support.

**(3) Property bond.** The justice court judge may authorize the clerk of that court to which the bond is returnable, or the sheriff or officer having custody of the defendant, to accept a property bond in lieu of a cash deposit bond or surety bond. A property bond, if so authorized, requires a defendant to deposit with the clerk of that court to which the bond is returnable, or the sheriff or officer having custody of the defendant, property that has an unencumbered value equal to or greater than the full amount of the bail set by the court. To determine whether the unencumbered value of the property is sufficient bail, the clerk of the court, or the sheriff or officer having custody of the defendant, may examine under oath, or take an affidavit in writing of, the person presenting the property for deposit as security. Upon accepting and receiving any property to satisfy bail, the clerk of the court, or the sheriff or officer having custody of the defendant, shall:

- (i) give the defendant a receipt of the property deposited;
- (ii) secure the property for safekeeping as directed by the justice court judge; and
- (iii) forthwith deliver an affidavit of compliance with (i) and (ii) of this subdivision with the justice court judge, who shall then order the release of the defendant.

**(c) When a 100 % bond is required.** In all cases involving murder, manslaughter, rape, armed robbery, kidnapping, or other crime punishable by incarceration for a term of twenty (20) years or more, bond shall be 100% of the bail set, unless otherwise ordered by the court.

In all other cases, persons permitted to make bail may, in lieu of a 100% bond, make a cash bail bond provided the following requirements are met:

1. The accused must never have been convicted in any court of this state, another state or a federal court, of a crime punishable by more than one year's imprisonment, been charged with escape, or had an order nisi entered on a previous bond;
2. The amount of the bond must be set by the proper authority;
3. A return date must be set by the proper authority;
4. The accused must tender to the clerk of the circuit court ten percent (10%) of the amount of the bond as set, in cash, or \$250.00 in cash, whichever is greater;
5. The accused must sign an appearance bond guaranteeing his/her appearance and binding himself/herself unto the State of Mississippi in the full amount of the bond as set to be used in the case of default;
6. The accused, by affidavit duly notarized, must swear in substantially the following form:

State of Mississippi  
County of \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, \_\_\_\_\_, who after being duly sworn states:

- (a) I have never been convicted in any court of this state, another state, or a federal court of a crime punishable by more than one year's imprisonment. I have never been charged with escape. I have had no

order nisi entered on a bail bond executed by me.

(b) The proper authority has set the sum of \$\_\_\_\_\_ as the amount of bail bond to be executed by me. This bond was set by \_\_\_\_\_.

(c) A return date has been set for this bond. Its return date is \_\_\_\_\_ and was set by \_\_\_\_\_.

(d) I have tendered to the clerk of the Circuit Court of \_\_\_\_\_ County, Mississippi, ten percent of the amount of said bond in cash, which sum is not less than \$250.00. Said cash is my property. I authorize the clerk of said court to dispose of the same as follows: If the bond is forfeited, the cash tendered will be paid by the clerk, less a fee of not more than \$10.00, to the county, and the amount so paid will be credited on the bond forfeited. If I appear on the return day and a final disposition is made of the case, the amount deposited with the clerk, less a fee of not more than \$10.00 to be retained by the clerk, will be disposed of as ordered by the court.

(e) I agree to report to the clerk of the court by telephone, or in person, and in writing on the first Monday of each month as to my current address and telephone number. If I fail to do so, I agree that the bond may be declared in default.

**(d) Release on personal recognizance.** The justice court judge may order that a defendant charged with a crime and eligible for release without bail be release on personal recognizance. All releases on personal recognizance shall contain the mandatory conditions of release, and any imposed discretionary conditions of release, ordered by the judge.

**(e) Bail forms.**

**(1) Bail bonds to include conditions of release.** All secured appearance bonds and releases on personal recognizance shall be in writing and contain the mandatory conditions of release, and any imposed discretionary conditions of release, ordered by court under this rule.

**(2) When bail is posted by a surety.** If bail is posted by a surety authorized to execute an appearance bond under the Mississippi Code, the bail form shall be pursuant to section 99-5-1 of the Mississippi Code.

**(3) When bail is taken in open court.** If bail is taken in open court, the bail form shall be pursuant to section 99-5-3 of the Mississippi Code.

**(4) Bail bonds to be made payable to the State of Mississippi.** All bail bonds shall be made payable to the State of Mississippi and shall bind the defendant and any sureties for the full amount of the bail set by the judge until the principal on the bond has been discharged by due course of law in accordance with the Mississippi Constitution, the Mississippi Code, and these rules.

**(5) Return of bail bond.** Felony bail bonds are returnable to circuit court and misdemeanor bail bonds are returnable to justice court.

**(f) Collecting fees on bail bonds.** The clerk of that court to which the bail bond is returnable shall in all cases collect the fee imposed by section 83-39-31 of the Mississippi Code on the face value of the bond by calculating the fee on the amount of bond, not the amount deposited.

**(g) Factors the judge may consider in determining the conditions of release.** In determining the conditions of release for any defendant charged with a bailable offense, the judge may consider:

(1) the length of the defendant's residency in the community;

- (2) the defendant's employment status and employment history;
- (3) the defendant's financial condition;
- (4) the defendant's family ties and relationships;
- (5) the defendant's reputation, character and mental condition;
- (6) the defendant's prior criminal record, including any record of prior release on recognizance or on bail;
- (7) the identity of responsible members of the community who would vouch for the defendant's reliability;
- (8) the nature of the offense charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance;
- (9) threats made against victims or witnesses; and
- (10) any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

**(h) Appearance bond schedule.** The following appearance bond schedule is established as a general guide in setting bail for persons charged with bailable offenses. The judge should exercise discretion in setting bail above or below the scheduled amounts. Constitutional or statutory restrictions prevail over any conflict in the scheduled amounts set forth below.

**APPEARANCE BOND SCHEDULE**  
Recommended Range

**FELONIES**

Capital felony.....	\$25,000 to No Bail Allowed
Manslaughter (or any other non-capital crime involving loss of human life). . . . .	\$10,000 to \$1,000,000.
All other non-capital felonies:	
If punishable by a maximum of 20 years or more.....	\$20,000 to \$250,000.
If punishable by a maximum of 10 years but less than 20 years.....	\$10,000 to \$100,000.
If punishable by a maximum of less than 10 years.....	\$5,000 to \$50,000.

**MISDEMEANORS**

Non-traffic related offenses:	
If punishable by a maximum of 1 year.....	\$500 to \$2,000.
If punishable by a maximum of 6 months.....	\$250 to \$2,000.
If punishable by less than 6 months. . . . .	\$100 to \$500.
If punishable by only a fine. . . . .	\$50 to maximum of possible fine, court costs and assessments.
Traffic related offenses:	
Misdemeanor DUI and DWLS.. . . .	\$500 to \$2,000.
Reckless driving or careless driving.....	\$100 to \$300.
Speeding and other traffic violations. . . . .	\$50 to maximum of possible fine, court costs and assessments.

**(i) Mandatory conditions of release orders.** Every order of release under these rules shall contain the following conditions:

- (1) that the defendant submit to the orders and process of the court having jurisdiction of the case;
- (2) that the defendant refrain from committing any criminal offense;
- (3) that the defendant, if charged with a felony, not depart from the state without permission of the court;

- (4) that the defendant promptly notify the court of any change of address; and
- (5) that any reported violation of the order of release will result in the issuance of an arrest warrant.

**(j) Discretionary conditions of release orders.** The judge may include in the order of release one or more of the following conditions if deemed reasonably necessary to secure the defendant's appearance or to protect the public:

- (1) a secured or unsecured appearance bond in an amount specified by the court;
- (2) placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant;
- (3) restrictions on the defendant's travel or place of abode during the period of release;
- (4) restrictions on the defendant's direct or indirect contact with any specified person(s);
- (5) participation in and successful completion of any drug, alcohol, anger management, mental health, or other treatment required by the court;
- (6) participation in G.E.D. classes and testing or in any other educational activities required by the court; and
- (7) any other conditions which the court deems reasonably necessary.

**(k) Modifying the conditions of release.** Upon the motion of any party or the judge's own initiative, the judge may modify the conditions of release if:

- (1) the prosecutor and the defendant have been given an adequate opportunity to respond to the proposed modification;
- (2) there is good cause shown justifying the modification; and
- (3) the judge enters a written order detailing the reasons for the modification.

Any order modifying the conditions of release shall be in writing and signed by the judge.

In all cases that have been bound over to await the action of the grand jury, the justice court shall have concurrent jurisdiction with the circuit court to consider modifications of release anytime prior to indictment.

**(l) Revoking the conditions of release.** Upon the motion of the prosecutor or the judge's own initiative, the judge may order the issuance of an arrest warrant or an order to show cause if:

- (1) the motion alleges facts and circumstances constituting a material breach of the conditions of release;
- (2) the motion alleges that a material misrepresentation or omission of fact was made in securing the defendant's release; or
- (3) the revocation of the defendant's release is otherwise required by law.

A copy of the motion shall be served with the arrest warrant or the order to show cause.

The justice court judge shall conduct a hearing on the motion without undue delay, but in no event later than seventy-two (72) hours of arrest for a defendant in custody. A judge may modify the conditions of release or revoke the defendant's release if the judge finds probable cause that the defendant has violated the conditions of release or that a material misrepresentation or omission of fact was made in securing the defendant's release. Any order modifying the conditions of release or revoking the defendant's release shall be in writing and signed by the judge.

In all cases that have been bound over to await the action of the grand jury, the justice court shall have concurrent jurisdiction with the circuit court to consider revocations of release anytime prior to

indictment.

**(m) Revocation of bail under Article 3, Section 29(2) of the Mississippi Constitution.** If a person charged with committing any offense that is punishable by death, life imprisonment or imprisonment for one (1) year or more in the penitentiary or any other state correctional facility is granted bail and (a) if that person is indicted for a felony committed while on bail; or (b) if the court, upon hearing, finds probable cause that the person has committed a felony while on bail, then the court shall revoke bail and shall order that the person be detained, without further bail, pending trial of the charge for which bail was revoked. The term "felony" under this subdivision means any offense punishable by death, life imprisonment or imprisonment for more than five (5) years under the laws of the jurisdiction in which the crime is committed. In addition, grand larceny shall be considered a felony for the purposes of this subdivision.

**(n) Forfeiture of bail bonds.** Procedures for the forfeiture of bail bonds shall be pursuant to section 99-5-25 of the Mississippi Code and any other applicable statutes or regulations.

**(o) Mittimus.** When the defendant is committed to jail for default in not giving bail, the justice court judge shall issue a mittimus pursuant to section 99-5-31 of the Mississippi Code.

**(p) Exoneration.** Upon a finding of no further need for an appearance bond, the justice court judge shall order the exoneration of the appearance bond and the return of any security deposited with the clerk of that court to which the bond is returnable or the sheriff or the officer having custody of the defendant.

### **RULE 3.08 MULTIPLE OFFENSES**

Multiple offenses may be charged as separate counts in the same criminal affidavit and tried in a single proceeding if all the offenses:

- (1) are triable within the jurisdiction and venue of the court; and
- (2) occurred in the same act or transaction or are linked by a common scheme or plan.

But at trial, the judge or jury shall return a separate verdict on each count. The judge shall then impose a separate sentence for each conviction. Multiple sentences may run concurrently with or consecutively to each other pursuant to section 99-19-21 of the Mississippi Code.

### **RULE 3.09 JOINDER**

Two or more defendants may be charged in the same criminal affidavit if:

- (1) each of the charged offenses apply to each of the defendants;
- (2) each defendant is charged with conspiracy and some of the defendants are also charged with one or more offenses linked to the conspiracy; or
- (3) each of the charged offenses are part of a common scheme or plan.

### **RULE 3.10 AMENDING AFFIDAVITS**

Any affidavit charging a defendant with a criminal offense may be amended if:

- (1) the defendant is not unfairly surprised by the amendment; and
- (2) the defendant is afforded a fair opportunity to prepare a defense in the face of the amendment.

Amendments to affidavits may include charging the defendant with an enhanced offense because of a prior conviction. No affidavit may be amended after the case has been given to the trier of fact.

### **RULE 3.11 WHO IS TO PROSECUTE CASE**

All criminal cases in justice court shall be prosecuted by the county prosecutor or by an attorney lawfully designated by the county prosecutor. Except to clarify testimony, the judge may not question during the trial any of the witnesses.

### **RULE 3.12 PRESENCE OF DEFENDANT**

**(a) Defendant's right to be present.** The defendant has the right to be present at the initial appearance, the preliminary hearing, the trial, sentencing and any other proceeding in the case that is governed by these rules.

**(b) Waiver of the right to be present.** A defendant waives the right to be present at a proceeding by:

- (1) knowingly, intelligently, and voluntarily signing a written waiver in open court;
- (2) filing with the court a written consent executed by the defendant and his attorney of record; or
- (3) voluntarily being absent from a proceeding after receiving notice of the time and place of the proceeding, notice of the right to be present at the proceeding, and a warning that the proceeding would go forward despite the defendant's absence upon a failure to appear.

**(c) Ordering the defendant to be brought before the court.** If a defendant is not present at the trial, or any stage thereof, or at any other proceeding, and the defendant's right to be present has not been waived or the absence has not been excused, the judge may enter an order directing law enforcement officers to bring the defendant forthwith before the court for the trial or proceeding.

**(d) Expulsion for disruptive or disorderly conduct.** A defendant who engages in disruptive or disorderly conduct, after having been warned by the court that such conduct will result in expulsion from the proceeding, shall forfeit the right to be present at that proceeding. But any defendant so excluded shall be granted a reasonable opportunity to return to the courtroom upon giving personal assurances of good behavior. For any defendant removed from a proceeding under this rule, the judge must use every practicable means to allow the defendant to hear and observe the proceedings and to consult, at reasonable intervals, with counsel.

### **RULE 3.13 PLEAS**

**(a) Pleas allowed in justice court.** A defendant may enter a plea of guilty, not guilty, or, with the permission of the court, nolo contendere.

**(b) Voluntariness.** Before accepting a plea of guilty or nolo contendere, the judge must determine that the plea is knowingly, intelligently, and voluntarily made and that there is a factual basis to support it. A plea of guilty or nolo contendere is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea was knowingly, intelligently, and voluntarily made must be included in the uniform case record.

**(c) Advice to the defendant.** Before accepting a plea of guilty or nolo contendere, the judge shall determine if:

- (1) the defendant is competent to understand the nature of the charge(s);
- (2) the defendant understands the nature and consequences of entering the plea;
- (3) the defendant understands the maximum and minimum penalties provided by law;
- (4) the defendant understands that by entering the plea he waives the constitutional right of a trial, a trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; and
- (5) the defendant is aware of the right to an attorney at every stage of the proceedings and, if indigent, the right to appointed counsel.

**(d) Accepting pleas punishable by imprisonment.** The judge shall not accept a guilty or nolo contendere plea for any offense punishable by imprisonment, unless:

- (1) the defendant is represented by counsel or, if indigent, appointed counsel; or
- (2) the defendant has submitted to the court a signed waiver of counsel that is knowingly, intelligently, and voluntarily made. Any waiver so submitted shall be retained in the court file.

#### **RULE 3.14 PROCEEDINGS AT TRIAL**

The trial shall proceed in the following order unless otherwise directed by the court:

- (1) The judge shall, in open court, read the affidavit and state the defendant's plea.
- (2) The prosecutor makes an opening statement.
- (3) The defendant makes an opening statement or defers it until the close of the prosecution's case. If there are two or more defendants, the first to be charged (or to appear on the affidavit) proceeds first. But the defendants may agree to a different order.
- (4) The prosecutor presents evidence to support the charge.
- (5) The defendant may make an opening statement if it was deferred.
- (6) The defendant may present evidence in defense.
- (7) The prosecutor may present rebuttal evidence. If so presented, the defendant may then offer surrebuttal evidence.
- (8) In cases tried by a jury, the judge shall instruct the jury.
- (9) The prosecutor may make a closing argument.
- (10) The defendant may make a closing argument. Failure of the prosecutor to make a closing argument shall not deprive the defendant of the right to make a closing argument.
- (11) In cases tried by a jury, the jury shall retire to deliberate on a verdict. In cases tried without a jury, the judge shall review the testimony and evidence before reaching a verdict.
- (12) The verdict is pronounced in open court. If the verdict is not guilty, the judge shall discharge the defendant from custody or, if the defendant is not in custody, discharge the defendant from any bond that was posted. If the verdict is guilty, the judge shall impose sentence without unreasonable delay.

### **RULE 3.15 MISTRIAL**

**(a) For misconduct by the defense.** Upon motion of the prosecutor, the judge shall declare a mistrial if there occurs during the trial misconduct by the defendant, the defendant's attorney, or a witness of the defense resulting in substantial and irreparable prejudice to the prosecution. But if there are two or more defendants, the judge shall not declare a mistrial as to any defendant who is not an offending party and who requests that the trial continue.

**(b) For misconduct by the prosecutor.** Upon motion of the defendant, the judge shall declare a mistrial if there occurs during the trial misconduct by the prosecutor or a witness of the prosecution resulting in substantial and irreparable prejudice to the defense.

**(c) Other reasons for declaring a mistrial.** Upon motion of any party or the judge's own initiative, the judge shall declare a mistrial if the trial cannot proceed in conformity with law or the jury is deadlocked and there is no reasonable probability of a unanimous verdict.

### **RULE 3.16 SENTENCING**

If the defendant is adjudged guilty of the offense charged, the judge shall impose sentence without unreasonable delay. A defendant is adjudged guilty if:

- (1) the court has accepted the defendant's plea of guilty or nolo contendere; or
- (2) the defendant has been found guilty by a verdict of the jury or judge.

The judge shall sentence the defendant pursuant to the Mississippi Code and any applicable rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts.

### **RULE 3.17 FINES, RESTITUTION, AND COURT COSTS**

**(a) Payment schedule.** If a defendant is sentenced to pay a fine, restitution, or court costs, the judge may order payment to be made within a specified period of time or in specified installments. Restitution is to be paid as promptly as possible according to the defendant's ability to pay.

**(b) To whom payment is to be made.** Unless otherwise directed by the court, the payment of a fine, restitution, or court costs shall be made to the justice court clerk.

**(c) How monies received are to be applied.** Monies received from the defendant shall be applied in the following order:

- (1) Constable fees, if applicable.
- (2) Restitution.
- (3) Fines.
- (4) Court costs.

The clerk shall, as promptly as practicable, forward any restitution payments to the victim.

**(d) Show cause hearing for failure to make payments.** If the defendant fails to pay any fine, restitution, or court costs, the judge may issue a show cause citation requiring that the defendant appear before the



court to explain why the default in payments should not be treated as contempt of court. If the defendant fails to appear on the show cause citation, the judge may then issue an arrest warrant to secure the defendant's appearance in court. At the show cause hearing, the judge must inquire into the reasons for the defendant's failure to make the ordered payments.

If the defendant willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the judge may revoke probation and sentence the defendant to imprisonment pursuant to section 99-19-20 of the Mississippi Code for the nonpayment of a fine and pursuant to section 99-37-9 of the Mississippi Code for the nonpayment of restitution. But the aggregate of the period of incarceration imposed pursuant to this rule and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

If the defendant could not pay despite sufficient bona fide efforts to acquire the resources to do so, the judge must consider alternate measures other than imprisonment, which may include:

- (1) relief from payments pursuant to section 99-37-11 of the Mississippi Code;
- (2) placing the defendant in the Pretrial Intervention Program pursuant to section 99-15-109 of the Mississippi Code; and
- (3) if the order is a result of a traffic violation, giving notice to the Commissioner of Public Safety to suspend the defendant's driver's license pursuant to section 63-1-53 of the Mississippi Code.

**(e) Civil actions in collecting unpaid fines, costs, and restitution.** This rule shall not be construed to extend or limit the collection of a fine, costs, restitution, or any installment thereof, pursuant to section 99-37-13 of the Mississippi Code or as otherwise allowed by law. Any judgment of the justice court shall operate as a lien on the real or personal property of the defendant when enrolled pursuant to section 11-9-129 of the Mississippi Code.

### 3.18 EXPUNGING RECORDS

**(a) Expunging misdemeanor convictions other than traffic violations.** The justice court judge may expunge a misdemeanor conviction if:

- (1) the defendant files a petition to expunge the misdemeanor conviction;
- (2) the defendant gives ten (10) day's written notice to the county prosecutor before any hearing on the petition;
- (3) the defendant is a first offender—that is, without any prior non-traffic criminal convictions;
- (4) the defendant's misdemeanor conviction is not a traffic violation; and
- (5) the judge determines and makes a written finding that the defendant has satisfactorily served his sentence, including the payment of all imposed fines, fees, restitution, and court costs.

The justice court clerk shall promptly report to the Mississippi Justice Information Center all instances where a defendant's misdemeanor conviction has been expunged.

**(b) Expunging misdemeanor charges.** The justice court judge shall expunge the record of any case if:

- (1) the defendant files a petition to expunge the record pursuant to section 99-15-59 of the Mississippi Code;
- (2) the defendant gives ten (10) days' written notice to the county prosecutor before any hearing on the petition;
- (3) the defendant was arrested or issued a citation; and

(4) the case was dismissed or the charges were dropped or there was no disposition of the case.

**(c) Expunging traffic convictions for first-time violators.** The justice court judge on its own motion shall expunge the conviction of a misdemeanor offense under Chapter 3, 5 or 7 of Title 63 of a defendant who is eligible for and successfully completes a court-approved traffic violator course pursuant to section 63-9-11 of the Mississippi Code. The justice court clerk shall forward a record of the traffic conviction and the expungement to the Department of Public Safety pursuant to section 63-9-17 of the Mississippi Code.

### **3.19 JUVENILES CHARGED WITH CRIMES**

**(a) Restrictions of arrest warrants and detention orders.** A justice court judge may not issue an arrest warrant or detention order for any child who has committed an offense that is within the exclusive original jurisdiction of the youth court, including status offenses. For purposes of this rule, a “child” means an unmarried person who is neither eighteen years of age or older nor on active duty for a branch of the armed services and who has not previously been certified as an adult and convicted. A “status offense” is conduct that would not be a crime if committed by an adult, such as a curfew violation, a truancy violation, or running away from home.

**(b) Restrictions on the detention of children charged with misdemeanor crimes.** A justice court judge must restrict the detention of a child to the juvenile facility designated by the youth court of that county wherein the justice court is situated if the violated offense is:

- (1) a hunting or fishing violation;
- (2) a traffic violation;
- (3) a misdemeanor violation of the Mississippi Implied Consent Law;
- (4) a violation of a county resolution or ordinance;
- (5) a violation of section 67-3-70 of the Mississippi Code, which is the underage drinking law; or
- (6) any other misdemeanor offense that is not within the exclusive original jurisdiction of the youth court.

**(c) Youth court must be notified if a child is sentenced to be incarcerated.** When a child is convicted of any misdemeanor offense and is sentenced to serve a period of incarceration, the justice court judge shall notify the youth court judge of the conviction and sentence prior to the commencement of the incarceration. Any incarceration of the child may be only in a juvenile facility designed by the youth court of that county wherein the justice court is situated.